IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

Chapter VIII, Rule 32(2) (b)

Description of Case

F.A. No. 873 of 2001
(Old No. 530 of 1984)

Date of decision:- 19-7-2006

A.F.R. (Approved for Reporting)
~~Not Approved for Reporting~~

Date:- 19-7-2006 Initials of Judge

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

First Appeal. NO. 873 OF 2001

(Old No. 530 of 1984)

State for Uttar Pradesh. …. Appellant.

Versus

1. Bachan Singh Negi
2. Sri Gautam Singh Negi
3. Sri Pureb Singh Negi.
4. Sri Chait Singh Negi alias Chain Singh Negi.
5. Sri Devendra Singh Negi
   All sons of Sri Hari Saran Singh.
   All resident of village Dalla, Tehsil Argarh, district Tehri

…..… Respondents.

Sri Nand Prasad, learned Standing counsel for the Appellant.
Sri L. Dobhal, learned counsel for the respondents.

Dated: 19.07.2006.

Hon'ble J.C.S. RAWAT, J.

1. This is an appeal against the judgment and decree dated 26.06.1984 passed by the then District Judge, Tehri Garhwal in Original suit No. 57 of 1983 titled as Bachan Singh and others Vs state of U.P. The trial court decreed the suit for a sum of Rs. 53,800/- by way of compensation awarded to the plaintiff.

2. Brief facts for the disposal of this appeal are that the respondents/plaintiffs instituted a suit for recovery of Rs. 53,800/- by way of compensation for damages caused by defendant/appellant to the crops, Gharat and trees of the plaintiffs/respondents while constructing – Lambgaon Kotalgaon Chamiyala Motor Road. It is further alleged in the plaint that the plaintiffs/respondents were the bhumidhars of the plot numbers detailed in the plaint and further alleged that their names were recorded in the settlement record in respect of the plots aforesaid. It was further alleged that the

Plaintiffs/respondents had a Gharat situated in plot No.3847 and the said Gharat was a source of livelihood of the plaintiffs and they had been earning an income of Rs. 200/- per month. It was also alleged that most of the said land was irrigated and some were unirrigated plots. It was further alleged that there were trees of Bhimal, Kariyal, Timla,Amla, Kharik, Cheer and Sirs standing on the said plots. There were some fruit bearing trees also. It was further alleged that the said land was being used for the agricultural purposes also. The appellant started that construction work of Lambgaon Chamiyala Motor Road in the month of December, 1980. The aforesaid plot numbers of the plaintiffs/respondents were situated on the adjoining sloppy land on which the road was being constructed. While constructing the road by the appellant the debris and the big stones, boulders fell down over the plots mentioned above. The crops, Gharat, Gul thereof and trees standing over the land were destroyed by the debris and the stones coming from the constriction of the road. The plainitiffs/respondents could not produce any yields from the fields for the seven crops. Thus, the plaintiffs had claimed a compensation of Rs. 35,000/- for the crops and Rs. 4400/- for the damages caused to the Gharat and Rs. 14,400/- for the loss on account of the trees standing on the land. Several requests were made for the removal of the said debris over the land in dispute and also to pay the compensation for the damages which had been suffered by the plaintiffs/respondents. when they did not pay any heed to the repeated requests for the plaintiffs/respondents a notice under section 80 CPC was served upon the appellant/defendant. When no damages were paid as claimed in the notice, the present suit was filed before the trial court.

3. The defendant contested the suit and alleged that the Gharat for which the damages had been claimed did not belong to the plaintiffs/respondents. The damages caused to the plaintiffs/respondents were due to the negligence of the plaintiff Nos.3 and 5 because they themselves were the contractors of the road. It was further alleged that the damages thereby caused to the plaintiffs' Gharat, trees, protection wall and Gul claimed by the plaintiffs were exaggerated and excessive and wrong. It was further alleged that the defendant/appellant also assessed the damages through its departmental Amin and the department had assessed the damages of the trees, crops etc. to the tune of Rs. 17,850.63p. only. The appellant was ready to pay a sum of Rs. 17,850.63p. only to the plaintiffs. It was further alleged that the plaintiffs/respondents had alleged wrong and false numbers of the trees which had been destroyed under the debris and the estimate of the crops given by the plaintiffs/respondents were wrong and excessive.

4. On the basis of the pleadings of the parties the necessary issues were framed by the trail court

5. I have heard the learned Standing Counsel for the state, sri Nand Prasad and learned counsel for the respondents, Sri L. Dobhal.

6. The learned standing counsel appearing on behalf of the appellant contended that the said Gharat for which the compensation has been demanded did not belong to the plaintiffs/respondents. The learned counsel for the respondents refuted the contention. The plaintiffs/respondents adduced the evidence of PW 1 Bachan Singh, PW 2 Prem Singh, PW 3 Gopi Nath, PW 4 Bhajan Singh, and PW 5 Devendra Singh in support of his contention. The statement of PW 1 to PW 5 clearly state that

The Gharat in question was situated in plot No. 3847 which belong to the plaintiffs and they are bhumidhars of the said land. In support of his oral evidence the plaintiffs/respondents had also adduced the evidence of Ext.1 to Ext.10 which are the extracts of Khatauni. It also reveals that the field no. 3847 had been shown in the name of the plaintiffs/respondents. The learned Standing Counsel pointed out that it seems that the word '3847' has been added lateron. This fact had not been brought before the trial court. If it was not correct and that khatauni did not contain the plot No. 3847. The State could have field the correct khatauni before eth trial court to show that the plot No. 3847 does not belong to the plaintiffs/respondents. The learned trial court had observed while delivering the judgment that the said issue was not seriously contested before him by the defendant. The defendant had adduced the evidence of Rama Nand (DW 1) and Prem Kumar Gupta (DW 2), the Amin of the defendant and Junior Engineer of the department respectively. They have not stated in the evidence before the trial court that the Gharat in question did not belong to the plaintiffs/respondents or it did belong to others. The defendant/appellant had also filed an estimate by which the damages of the plaintiffs had been assessed by the department. Ext.A 1 to Ext.A3 also reveals that the appellant had assessed the damages for the Gharat also. The entire evidence on record establishes that the Gharat in question was situated in the plot No. 3847 which belong to the respondents and the respondents were the bhuidhars of the said plot. I do not find any substance in the contention raised by the learned Standing Counsel.

7. Now it ash to be decided whether any crop of the plaintiffs/respondents was damaged or they were entitled to

get the damages for the seven crops as alleged in the plaint. The appellant had admitted the fact for the debris and boulders falling on the plot mentioned above belonging to the plaintiffs but the appellant had denied the extent of damages caused thereby to the plaintiffs' crop. The appellant had only claimed that the damages claimed by the plaintiffs on account of each and every head aforesaid were exaggerated, excessive and wrong. The defendant had filed an estimate of damages caused to the plaintiffs/respondents which are Ext.A 1 to Ext.A3. This estimate was prepared by the Amin Rama Nand (DW 1) of the defendant/appellant and the said estimate was verified by Prem Kumar Gupta (DW 2), the Junior Engineer of the appellant. The defendant had adduced the evidence of both the abovenamed witnesses. It was pointed out by the learned counsel for the respondents that the said estimate can not be relied upon and the estimate and the assessment of damages had not been correctly made. The learned Standing Counsel refuted the contention. The perusal of the evidence of DW 1 and DW 2 reveals that they had stated in their evidence that they did not know the exact number of the trees or their kind which were destroyed by falling of the debris over them which were situated in the fields of the respondents. They had further stated that they have not counted the trees before the falling of the debris and boulders in the disputed plots. This leads to take an inference that the estimate and the number of trees and their kinds were not prepared correctly. It is also in the evidence of the appellant that the rates on the basis of which compensation had been assessed, were scheduled rates of the Forest department. These scheduled rates of the forest department had not been duly proved or produced before the trial court on the basis of which they claimed to have

prepared the aforesaid estimate. It is also pertinent to mention here that the said estimates were prepared in absence of the plaintiffs/respondents. The defendant's witnesses tried to say during the course of the evidence when the said estimate was prepared one of the plaintiffs was with Sri Rama Nand, the Amin. He had further stated that he obtained the signature in a separate sheet which was handed over the Junior Engineer. If it was so the signature had been obtained by the Amin at the time of inspection. The said document would have been produced before the trial court. Non-production of such document also leads to an inference that the said estimate was prepared behind the back of the plaintiffs and even without informing the plaintiffs/respondents. Thus, this document can not be read in evidence against the plaintiffs/respondents. It is also in the evidence of the defendant/appellant that they had noted the measurements and number for the trees and other things in the form of rough note but that too had been with-held for the reason best known to the appellant. It is very surprising that DW 1Rama Nand had stated that he went at the spot and he prepared the estimate at the spot but he had not put any date under his signature and there is no date under the signature of the Junior Engineer. The document only reveals that the Assistant Engineer had put his signature below the date as 21.8.1982. DW 1 Rama Nand had categorically stated in his evidence that he could not say when he went at the spot and it was not possible to tell the exact date of the inspection. It is also pertinent to mention here that when they prepared the estimate they did not mention the tree of 'Pine'. When the defendant filed the statement they had indicated that there was a 'Pine' tree over the disputed land. The above circumstance leads to take me the inference that

the estimate which had been prepared by the department for the assessment of the damages is not correct according to the spot.

8. Now the question arises whether any damage was caused to the Gharat or not. PW 3 the contractor who repaired the Gharat had stated in his evidence that the Gharat of the plaintiffs was in a dilapidated condition and a substantial damage could have been caused to the Gharat by falling he debris over the Gharat and he had proved by his evidence that he repaired the Gharat in question and the plaintiffs had paid a sum of Rs. 2000/-. The plaintiffs/respondents had also stated in their evidence that after the falling of debris they could not earn anything from the Gharat because the Gharat had been damaged due to the fall of the debris. They had further stated in the evidence that they used to earn Rs. 200/- per month from that Gharat. This evidence had not been rebutted by the defendant. Thus, I am of the view that the plaintiffs/respondents were entitled to recover a compensation to the tune of Rs. 4,400/-(Rs.2000/- for the repair of Gharat and Rs. Rs.2400/- as damages) in respect of the Gharat which was damaged by the falling of debris on it while the department was constructing the road through its contractor.

9. The next question arises for determination as to whether the plaintiffs themselves were negligent while working as a contractor of which the damages were caused to the respondents to the crop, trees, Gharat and wall in question. It is not disputed that plaintiff Nos. 3 and 5 Pureb Singh and Devendra Singh respectively were the contractors who were engaged in the construction of the road in question. The plaintiffs/respondents Nos.3 and 5 took this work with a view to save their fields and crop thereof as well

as their Gharat, Gul and wall and hey took a personal care to save their belongings. They have also stated in their evidence that they were not negligent in any way whatsoever. It is not disputed that these were the contractor on the road. They incurred the losses even in the contract aforesaid. DW 1 and DW 2 Rama Nand and Prem Kumar Gupta had stated that the plaintiffs who were the contractors for the construction of the road, were negligent because of which the debris fell down in the fields of the plaintiffs and destroyed their crops, trees and Gul but they have not given the details how much debris they have fallen down over the land whereas the plaintiffs' evidence specifically denies that they had caused any damages to the plaintiffs or they had fallen the debris over the land in dispute. Apart this, the department itself had prepared an estimate for the losses caused to the plaintiffs due to the negligence of the department and they were ready to pay the damages to the plaintiffs but only the amount was disputed in respect thereof. The plaintiffs' evidence being unrebutted leads to take an inference and to come to the conclusion that the plaintiffs/respondents No. 3 and 5 were not negligent in any way.

10. Now the aquestion arises whether the plaintiffs/respondents were entitled to get the damages for the trees standing over the land in dispute. The plaintiffs' evidence reveals that there was a 'Pine' tree standing over the plots which were damaged by the debris falling from the construction of the road. It is also in the evidence of the plaintiffs that the said tree was cut by the department and it was taken by them. The evidence further reveals that the cost of the said tree was Rs. 1000/-. The learned Standing counsel pointed out that the cheer' tree is used in the buildings even if it had fallen down, it would not become un-

useable and it would fetch the same cost which had been damaged by the debris. The learned counsel for the respondents refuted the contention and contended that the said ‘pine’ tree was used by the department and it was not used by the respondents. The appellant had not rebutted this fact of the plaintiffs in his evidence that the said tree was not taken by the department. It is pertinent to mention here that the department had not shown the tree in their estimate. Lateron they had assessed the cost of the ‘pine’ tree about Rs 750/-. It is also stated by the defendant during the evidence that the rates of the trees had been assessed on the basis of the scheduled rates of the forest department. The said rates had not been produced or proved before the court. The Court can not take note of it tat the rate of the ‘pine’ tree would have been Rs. 750/-. However, the plaintiffs’ evidence on this point is unrebutted and reliable. It is further notable that the appellant himself had indicated in his estimate that the respondents are entitled to a cost of Rs. 750/. If it would not have been used by the defendant, as contended, then there was no reason to show the cost of the said tree as Rs. 750/.- With regard to the remaining trees in question the evidence of the plaintiffs had given the details for the trees in their amount to which they were entitled by way of compensation in respect of the said trees. The plaintiffs/respondents had also given the details of the trees as well as the amount of compensation with respect to the trees in his plaint also. The plaintiffs’ evidence (PW 1 to PW 5) examined before the court below corroborates the rates and number of the trees in their evidence. The learned trial court had also given the details and the costs of the said trees. It would not be necessary to reiterate the same in my judgment. This evidence had not

been rebutted by the defendant/appellant. They have already stated that they are not aware about the market rate of the trees. They had further stated in their evidence that they had shown the scheduled rtes for the forest department which I have already considered this aspect. It is not disputed that the damage was caused to the trees. The appellant himself admitted that the damage was caused to the trees. The estimated cost given by the plaintiffs during his evidence is unrebutted, believable and reliable. The evidence of the plaintiffs clearly establishes that the plaintiffs/respondents were entitled to recover a sum of Rs. 14,400/- as claimed by them. The evidence of the plaintiffs remained consistant during the cross-examination also.

11. It was contended on behalf of the learned Standing counsel that the plaintiffs were entitled to recover the compensation in respect of the standing crops only which were destroyed by the falling of the debris thereon and not in respect of the successive crops because they could have very easily remove it and could sow crops lateron. It was further contended that the plaintiffs/respondents could not take advantage of their own negligence in not removing the debris themselves. It was further contended that the plaintiffs had not claimed the mandatory injunction for the removal of the debris from the spot against the appellant. In such circumstances the plaintiffs/respondents were not entitled to get compensation as claimed. It was further contended that the work was competed in the beginning year of 1981 and at least the plaintiffs can not claim for the losses of four crops for the year 1981 and 1982. It is not disputed that the defendant/appellant had removed the debris from the spot. It is also on record that several reminders as well as notices were given to the defendant/appellant to remove the said

debris but they did not pay any heed. It is also in the evidence of the plaintiffs that the cost of the removal of the debris was so much which was beyond the means of the plaintiffs to afford. It is obvious that the plaintiff could not remove the debris nor the appellant make it a condition precedent that the appellant should remove the debris itself before the compensation paid to them. The appellant can not compel the plaintiffs to file a suit for mandatory injunction for removal of the debris. It is also on the record that the repeated requests were made orally as well as by notice to remove the said debris, as such, in the circumstances the respondents can not be denied the compensation. It is also on record that the plaintiffs could not sow their seven crops and their standing crop in the initial stage had been destroyed due to the debris. I am of the view that the plaintiffs were entitled to get the amount as claimed under the head of the crops. I am completely in agreement with the findings recorded by the trail court in this regard and the plaintiffs/respondents were entitled to get a sum of Rs. 53,800/- with costs.

12. In view of the foregoing discussion, the appeal is devoid of merit and is liable to be dismissed.

13. The plaintiffs/respondents had filed a cross-objection in this appeal. The respondents had claimed that they were entitled to the damages and for the pendente-lite loss of the crops. The learned Standing Counsel contended that the plaintiffs/respondents are not entitled to get the said relief. It is pertinent to mention here that the plaintiffs had not filed the suit for the removal of the debris nor any relief of mandatory injunction had been claimed. If they would have claimed this relief in the suit then they would have been entitled to get the pendente-lite damages f the crops. As

such I do not find any force in the cross-objection which is liable to be dismissed.

14. The appeal is dismissed with costs. The cross-objection filed by the plaintiffs/respondents is also dismissed with costs.

(J.C.S. Rawat, J.)

19.07.2006
Negi.